IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 378 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE A.S.DAVE

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GIRISH M. DAS
Versus
ADDITIONAL CHIEF SECRETARY &

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Appearance :
MR GIRISH M DAS for Applicant
None for Respondents No.1-4
MR PD BHATE APP for Respondent No.5

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CORAM : HONOURABLE MR.JUSTICE A.S.DAVE

Date : 16/03/2006

ORAL JUDGMENT

[1] This petition is filed by the applicant who is practicing advocate under Article 226 of the Constitution of India with the following prayers:

> **[A]** Your Lordships be pleased to direct the Police Inspector, Anand Town Police Station to produce before this Hon'ble High Court, the complaint filed by the

present applicant on 10.02.2006 at about 11.00 P.M. which was handed over the P.S.O. Anand Town Police Station and further be pleased to direct the P.I. to file affidavit of the progress report on the investigation of the same.

[B] Your Lordships be pleased to direct the Executive Magistrate, Anand (City) to remain present with all the papers of so-called complaint shown to have been filed by the present applicant on which proceedings under Sections 107 and 151 has been initiated and bail bond were executed on 14.02.2006 and further be pleased to declare the said proceedings null and void in the interest of justice.

[C] Your Lordships be pleased to direct the Executive magistrate to initiate appropriate proceedings against the police

officer who produced and prepared the fake papers of criminal complaint under Sections 107 and 151 of the Criminal Procedure Code.

[D] Pending hearing and final disposal of this application Your Lordships be pleased to direct the Police Inspector, Anand Town Police Station to produce the constable who got signature of the present applicant forcefully and by threat to send the applicant behind bar in the interest of justice.

[2] Heard, learned advocate Mr.G.M.Das, appears as party in person, since he is the complainant. That main grievance agitated before this Court in the above mentioned prayer is to direct the Police Inspector, Anand Town Police Station to produce before this Court the complaint filed by the applicant on 10.02.2006 at about 11.00 P.M.

which was handed over to the P.S.O., Anand Town Police Station. He has further submitted that in fitness of things the Executive Magistrate be directed to remain present and also be directed that the Executive Magistrate initiate appropriate proceedings against the police officer who produced and prepared the fake papers of criminal complaint under Sections 107 and 151 of the Criminal Procedure Code.

[3] That the next grievance of the applicant is concerned, his complaint dated 10.02.2006 is not produced before the Executive Magistrate and the police has mislead the Executive Magistrate. He has further submitted that investigating authority was duty bound to produce all relevant papers before the concerned Executive Magistrate. He has further contended that on 12.02.2006, the present applicant was called by one constable and he was forced to sign on a paper and he had signed the same under protest. He has further

submitted that the proceedings taken by the investigating authority under Section 107 of the Criminal Procedure Code is a farce and the proper course for the investigating authority is to follow law as laid down by the Apex Court for registering the complaint.

Learned advocate Mr.Das has relied upon the decision of the Apex Court, in case of **Shiva Nath Prasad Vs. State of West Bengal & Ors.**, reported in **2006 AIR SCW 828**. Therefore, he has submitted that when as per the information given by him to the police authority also of cognizance offence on 10.02.2005, the police authority is duty bound to register the case and failure on the part of the police authority amounts to illegal exercise of powers and denial of his legal right for which petition under Article 226 of the Constitution of India is maintainable. He has also submitted that the police authority has misused the power by suppressing the relevant material and not proceeded in accordance with

law. He has further submitted that the Executive Magistrate has failed to apply his mind to the relevant facts and, therefore, also suitable direction be given to the Executive Magistrate.

[4] I have also heard learned APP Mr.P.D.Bhate for the respondent – State. That concerned police personnel is present with relevant records of the case. Learned APP has submitted that so far as the information given by the applicant on 10.02.2006 is concerned, the concerned police officer has made an endorsement to follow the due procedure, the same is also forwarded to the Executive Magistrate after making due inquiry. Not only that but as per learned APP, the complaint is also registered against the present applicant and considering the over all facts of the case, the police authority has taken preventive action since the atmosphere was surcharged due to quarrel between two minority communities. Learned APP has heavy placed

reliance on the statement of the present applicant recorded on 12.02.2006 and he has submitted that the applicant, who is an advocate could not have signed under protest when he was fully aware about the procedure adopted by the investigating authority in accordance with law.

[4.1] Having argued on merits of the case, Learned APP Mr.P.D.Bhate has submitted that so far as the averments and the prayer made in the petition are concerned, the main prayer/relief relates with regard to production of the complaint filed by the present applicant on 10.02.2006 and direction to the Executive Magistrate to remain present before this Court. According to Mr.Bhate, the extra-ordinary jurisdiction under Article 226 of the Constitution of India cannot be exercised on the basis of frivolous and baseless allegations levelled against the police authority just because the applicant happens to be an advocate.

According to learned APP Mr.Bhate, there are alternative remedy available with the applicant to approach the appropriate forum in accordance with law. He has further submitted that there is no specific averments with regard to the failure on the part of the Executive Magistrate to exercise his jurisdiction and alternative effective remedies available under Chapter XII, XIV and XV of the Code of Criminal Procedure and considering the above aspects, he has submitted that the petition deserves to be rejected with costs.

[5] In support of the arguments, learned advocate Mr.Das for the applicant has relied upon the decision of the Supreme Court in the case of Shiva Nath Prasad (Supra). While the same is counter by learned APP Mr.P.D.Bhate by relying upon the decision in case of **All India Institute of Medical Sciences Employees Union (Regd.) through its President Vs. Union of India & Ors.**,

reported in **1996 (4) Crime 180 S.C.** and in case of **Gangadhar Janardan Mhatre Vs. State of Maharashtra and others**, reported in **(2004) 7 S.C.C. 768** and it was submitted that when no action is taken by the police on the information given to it, the complainant can certainly invoke provisions under Section 190 and or under Section 200 of Code of Criminal Procedure. Lastly, he has submitted that this is not a fit case where in failure of the availability of alternative remedy, the Court can exercise power under Article 226 of the Constitution of India.

[6] Learned A.P.P. tried to distinguish the judgment reported in 2006 AIR SCW 828, he has submitted that in the abovementioned judgment, the Apex Court has laid down the duty of the investigating agency to register the case on the information disclosing the cognizable offence. He has submitted that nowhere in the said decision, the Hon'ble Supreme Court directed the High Court

to exercise extra-ordinary jurisdiction under Article 226 of the Constitution of India in event of failure on the part of the investigating agency to refuse to register the complaint. In the instant case, police has taken prompt action and even his complaint is also forwarded to the Magistrate. Therefore, law laid down by the Hon'ble Supreme Court does not help the case of the applicant.

[7] I have considered the relevant facts and submissions made by learned advocates appearing for the rival parties. I am unable to accept the submissions of learned advocate Mr.Das for the applicant that alternative remedy is not barred in exercise of power under Article 226 of the constitution of India and even exercise of power under Section 482 of the Criminal Procedure Code. The only prayer which is made in this petition is to direct the concerned police officer to produce the complaint dated 10.02.2006 filed by the

applicant and to further direct the Executive Magistrate to remain present along with the relevant papers. Having gone through the record of the case, it appears at this stage that the concerned police officer has already made an endorsement to take appropriate action on the complaint dated 10.02.2006 alleged to have been made by the present applicant. Not only that but the complaint is filed against the present applicant which is numbered as Criminal Complaint No.97/2006. In the above circumstances, if the investigating authority has taken prompt measures since the dispute involves two minority communities under Section 107 of the Criminal Procedure Code, it cannot be said that either the police authority or the Executive Magistrate has failed in their performance of statutory duty and against which remedy under Article 226 of the Constitution of India can be exhausted. Even otherwise also, as law laid down by the Apex Court in the case of **Gangadhar Janardan Mhatre**

(Supra), it has been clearly pronounced that without availing the remedy available under Cr.P.C., the appellant could not have approached the High Court by filing a writ petition and reference was made by the Apex Court to the provision of Sections 190 and 200 of Chapter XIV and XV of the Code of Criminal Procedure. In another decision in case of **All India Institute of Medical Sciences Employees Union**, (Supra), also takes similar view declaring the law that without availing of procedure provided in Code, petitioner is not entitled to approach High Court by filing a writ petition and seeking a direction to conduct an investigation in a particular manner only. By the aforesaid law, as laid down by the Apex Court, it is clear that in the present case, the concerned authority has not failed to take action in accordance with law. Not only that but, they have taken prompt measures when a dispute is arising out of scuffle between members of two minority communities in the larger

public interest. The applicant cannot take advantage of his position as an advocate to abuse process of law and invoke the extra-ordinary jurisdiction under Article 226 of the Constitution of India. None of the submissions of the learned advocate merits further consideration, since reliefs/prayers as already reproduced in Para:1 of this judgment are manifold and omnibus, seeking direction from this court in exercise of extra ordinary jurisdiction under Article 226 of the Constitution of India to produce all relevant papers pertaining to the complaint filed by the present petitioner and also to direct Executive Magistrate, Anand (City) to remain personally present with relevant materials etc., cannot be accepted, in view of the fact that the concerned police authority has taken prompt action and even the Executive Magistrate is also apprised about the facts and further assurance given by the learned A.P.P. to look into the grievance of the applicant in

accordance with law. Even the involvement of the present applicant in view of complaint no.97 of 2006 filed against the present applicant, also requires to be investigated, being a counter case against the present applicant and particularly the statement dated 12.02.2006 of the present applicant recorded by the police constable and the action taken by the concerned authority under Section 107 (B) the Code, I do not think it fit and proper, at this stage, to give any direction to the concerned investigating authority, as prayed by the present petitioner. So far as the ratio laid down by the Apex Court in case of Shiva Nath Prasad (Supra), I am in respectful agreement with the said propositions where the Apex Court has also taken into consideration Paragraphs 31, 32 and 33 of the earlier decisions in the case of **State of Haryana and Others Vs. Bhajanlal reported in AIR 1992 (SC) 604.** So far as the facts of the instant case are concerned, even there is no specific prayer/relief is made

seeking any direction from this Court directing the concerned police authority to register the case. It will be evident from the prayer clauses produced in Para:1 of the petition, which do not mention about any direction in this regard. So far as other directions are concerned, the same are disputed by the learned A.P.P. and on perusal of the record, it is found that action in accordance with law is taken, and, therefore, there is no reason to raise any suspicion at this stage about bonfa-fide action of the Investigating Authority, which requires an interdiction at this stage in any manner in exercise of powers under Article 226 of the Constitution of India. Not only that, but, the concerned authority has taken immediate action on the basis of complaint of both the sides, to maintain harmonious relationship between two minority communities procedure as laid down under Section 107 of the Code is also followed. In a given case, it is open for the

informant/complainant to take necessary action as envisaged under Section 154 (3) of the Code and can certainly resort to the remedies available under Section 190 and Section 200 of Chapter XIV and XV of the Code.

[8] In view of the above discussion, I do not find any merits in any of the submissions of the learned advocate of the petitioner, this petition stands dismissed with no order as to costs.

[ANANT S. DAVE, J.]

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